IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2005

CORAM

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.A.No.2762 of 2004

Chairman & Managing Director
Hindustan Teleprinters Ltd.,
Guindy
Chennai 600 032 .. Appellant/ Respondent

-Vs-

M.Rajan Isaac .. Respondent/ Petitioner

Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 29.4.2004 made in W.P.No.4157 of 1996.

For Appellant :: Mr.John for
M/s Ramasubramaniam &
Associates

For Respondent :: Mr.R.Gandhi
Senior Counsel for
Mr.R.G.Narendiran

JUDGMENT

D.MURUGESAN, J.

This writ appeal is directed against the order in W.P.No.4157 of 1996 dated 29.4.2004. The question that frequently arises for consideration by Courts as to the right of an employee to seek for legal assistance through his lawyer to defend the case in the disciplinary proceedings is put in as an issue in this case for our consideration. We are not narrating the entire factual aspects leading to the filing of the writ petition, except the following few facts in view of the disposal of the writ appeal on the limited questions involved.

2. The respondent, while he was working as Deputy General Manager (Management Services), was issued with a charge memo on 12.4.91. After an enquiry, he was removed from service by an order dated 18.3.92. On a challenge to the said order, the learned single Judge allowed the writ petition and set aside the order of removal. The learned Judge has held that the enquiry is vitiated for gross violation of the principles of natural justice, as the request of the respondent for assistance of lawyer was rejected even when he was pitted against a legally trained person in the enquiry.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

3. As the issue in question frequently arises for consideration, we propose to consider the same with reference to the settled law of the Supreme Court right from the year 1960. In "N.KALINDI AND OTHERS v. M/S TATA LOCOMOTIVES AND ENGINEERING CO. LTD., JAMSHEDPUR (AIR 1960 SC 914)", it was contended on behalf of the workmen that the enquiry on the results of which the orders of dismissal were based was not a proper and valid enquiry inasmuch as the workmen were not allowed to be represented at the enquiry by a representative of that particular union to which the workmen belonged. It was also argued that fair play demands that at such an enquiry the workman concerned should have reasonable assistance for examination and cross examination of the witnesses and for seeing that proper records are made of the proceedings. While repelling the said contentions, in paragraphs 4 & 5, the Supreme Court has held as follows:-

> "It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic tribunals the person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.
>
> Our conclusion therefore is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union, though of course an employer in his discretion can and may allow his employee to avail himself of such assistance."

In "BROOKE BOND INDIA (PRIVATE) LTD., v. SUBBA RAMAN (S) AND ANOTHER (1961-II-LLJ 417)", the view taken in Kalindi's case was quoted by the Supreme Court with approval.

4. A similar question came up for consideration before the Supreme Court in "THE DUNLOP RUBBER CO. (INDIA) LTD. v. THEIR WORKMEN (AIR 1965 SC 1392)". While referring to the Judgment in Kalindi's case, the Supreme Court has observed as follows:-

> "The Tribunal was also wrong in thinking that there was a denial of natural justice because the workmen were refused the assistance of a representative of their own Union. Under the Standing Orders it is clearly provided that at such enquiries only a representative of a Union which is registered under the Indian Trade Union

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Act and recognized by the Company can assist. Technically, therefore, the demand of the workmen that they should be represented by their own Union could not be accepted.

But we cannot say that the action of the Enquiry Officer was for that reason illegal or amounted to a denial of natural justice. In this connection, we have repeatedly emphasised that in holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. But as we have just indicated, in the circumstances of this case, we have no doubt that the failure of the Enquiry Officer to accede to the request made by the employees does not introduce any serious defect in the enquiry itself, and so, we have no hesitation in holding that the result of the said enquiry cannot be successfully challenged in the present proceedings."

Even in the above case where the workmen were entitled to be represented by their own Union as per the Standing Order, the Supreme Court held that the refusal to accede to the request of the workmen for insistence of a representative of their union was held as not violative of the principles of natural justice, but it was only observed that it is desirable that at such an enquiry the employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. By the said observation the Supreme Court laid down the law that there is no vested right in a workman to seek for assistance of a person of his choice in the absence of any rule, but it is only desirable that he should be given an opportunity to defend his case through a person of his choice. Holding so, the Supreme Court held that the enquiry could not be successfully challenged.

5. In "CRESCENT DYES AND CHEMICALS LTD. v. RAM NARESH TRIPATHI (1993 (2) SCC 115)", while upholding the limitation in Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 and the Standing Orders imposing restrictions on the right to representation, the Supreme Court has held as follows:-

"The doctrine of natural justice embodies two principles, namely: (i) no one can be a judge in his own cause, and (ii) a judicial or quasi-judicial tribunal ought not and shall not condemn any person unheard. In the present case we are not concerned with the first principle and must, therefore, confine ourselves to the second which recognises the right to be heard. The second principle envisages that the right to be heard in order to be effective must be preceded by notice

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

> as to the exact charge which a delinquent is called upon to meet. Does then the right to be heard include the right to be represented through counsel or agent of the choice of the delinquent? If a Domestic Tribunal refuses permission to a delinquent appearing before it to be represented by an agent would that amount to infringement of the rule of natural justice? There can be no doubt that a delinquent must be given an opportunity of presenting his case in such way suitable to the character of the enquiry which would ensure a fair hearing resulting in fair dispensation of justice. But does that extend to the right to be represented through counsel or agent is the question which we are called upon to answer."

In "ENDERBY TOWN FOOT BALL CLUB LTD. v. FOOTBALL ASSOCIATION LTD. (1971 (1) ALL ER 215)", the validity of a rule of the Football Association prohibiting clubs which appealed to it against decisions of County Football Associations from being legally represented was considered. While Fenton Atkinson L.J. & Cairns L.J. were inclined to take the view that the clubs might exclude legal representation by an absolute rule, Lord Denning, M.R. posed the question: 'Is a party who is charged before a domestic tribunal entitled as of right to be legally represented?' and answered it by saying 'much depends on what the rules say about it'. He further proceeded to add that when the rules are silent, then the party has no absolute right to be legally represented and it is a matter left to the discretion of the tribunal which must be properly exercised.

6. In "HARINARAYAN SRIVASTAV v. UNITED COMMERCIAL BANK AND ANOTHER (1997 (4) SCC 384)", the Supreme Court had in fact gone to the extent to reject the contention of the charge sheeted employee viz., "that the charge sheet has already been filed and a criminal trial was pending and that the enquiry conducted against him on the same set of facts would prejudicially affect his case and therefore the denial to have the assistance of an advocate is violative of the principles of natural justice". In that case, the claim for a lawyer's assistance was rejected on the ground that clause 19.12 of the Bipartite Settlement provides only an option to the employee to seek for a lawyer's assistance. While considering the said clause in Bipartite Settlement, the Supreme Court has held that even if the Bipartite Settlement provided a clause enabling the bank officer to have a lawyer's assistance, it is only an option and therefore the same cannot be claimed as a matter of right. Further, it is to be seen that in that case the request of the officer to defend himself with the assistance of an advocate was rejected considering the limited scope of clause 19.12 of the Bipartite Settlement, though the bank appointed a law graduate as a presenting officer.

7. In "BHARATH PETROLEUM CORPORATION LTD. v. MAHARASHTRA GENERAL KAMGAR UNION (1999 (1) SCC 626)", the same issue again came up for consideration before the Supreme Court with reference to the following "Model and Draft Standing Orders":

https://hcservices.ecourts.gov.in/hcservices/

"Para 14(4)(ba) of the Model Standing Orders, as framed by the Central Government under the Act for industrial establishments, not being industrial establishments in coal mines, provides as under:

In the enquiry, the workman shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member.

Clause 29.4 of the Draft Standing Orders, as certified by the appellate authority, provides as under:

If it is decided to hold an enquiry, the workman concerned will be given an opportunity to answer the charge/charges and permitted to be defended by a fellow workman of his choice, who must be an employee of the Corporation. The workman defending shall be given necessary time off for the conduct of the enquiry."

While upholding the above Standing Orders, the Supreme Court has held that an employee has no right to representation in the disciplinary proceedings by another person or a lawyer unless the service rules specifically provide for the same. The Supreme Court also held that the right to representation is available only to the extent specifically provided for in the rules.

8. Recently the same issue came up for consideration before the Supreme Court in "INDIAN OVERSEAS BANK v. INDIAN OVERSEAS BANK OFFICERS' ASSOCIATION AND ANOTHER (2001 (9) SCC 540)". The regulations of the bank enabled an officer-employee to take the assistance of any other officer-employee to defend him in the disciplinary proceedings, but a note was added restraining the officer-employee from taking the assistance of any other employee who had two pending disciplinary cases on hand in which he had to give assistance. While considering the scope of the said note to the regulations, the Supreme Court has observed as follows:-

"We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject-matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Considering a challenge to the note added to the regulations that in the absence of a corresponding ceiling in respect of engagement of a presenting officer by the management, the Supreme Court held

that the said note to the regulations is not violative of Article 14 as the management can always observe the same while considering the need for choosing a presenting officer in an individual case even in the absence of a stipulation therefor. The Supreme Court further observed that mere possibility or otherwise of any action which may result in differential standard or norm being adopted in a given case cannot be assumed to provide sufficient ground or reason to undermine the right of the management to make a regulation or standing order of the nature in question or militate against the reasonableness or justness of the said provision.

9. A combined reading of the above judgments leads to the following conclusions:

> (1) There is no vested or absolute right in the officer/employee/workman, as the case may be, to representation either through a counsel or through an agent unless the statutes/regulations/rules /standing orders recognise such a right.
> (2) The right to representation through a counsel or agent can be restricted, controlled or regulated by statutes/regulations/rules/standing orders, as the case may be.
> (3) In the absence of any provision in the statutes/regulations/rules/standing orders, refusal to representation either through a counsel or through an agent does not violate the principles of natural justice.
> (4) Even in case of only an option is given to an employee to secure the assistance of a lawyer/agent, by such clause, there is no vested or absolute right on the employee, as it is the discretion of the employer to accept such request depending upon the facts of each case with reference to the complicated issues raised and involved in the enquiry.

10. The question still remains is as to whether in the absence of any rule the workman or officer, as the case may be, would be entitled to the assistance of a lawyer when such workman or officer is pitted against a legally trained person. This issue came up for consideration in "C.L.SUBRAMANIAM v. THE COLLECTOR OF CUSTOMS, COCHIN (AIR 1972 SC 2178)". While considering the grievance of the appellant therein that his request for assistance of a lawyer was rejected even when he was pitted against a legally trained prosecutor, the Supreme Court has observed as follows:-

> "The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority's refusal to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself."

The said observation was made by the Supreme Court taking into consideration the fact as to whether the officer was given a reasonable opportunity to defend himself in accordance with sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 which provided that the government servant may not engage a legal practitioner for the purpose mentioned in that clause unless the disciplinary authority having regard to the circumstances of the case so permits. The Supreme Court while distinguishing the law laid down in Kalindi's case, Brooke Bond India (Private) Ltd. case and in Dunlop Rubber Co. Ltd. case has held in paragraph 17 as follows:-

"The learned counsel for the State relied on the decisions mentioned above in support of his contention that the appellant was not entitled to have the assistance of a legal practitioner. This contention is without force. In those cases this Court considered whether a person proceeded against in an enquiry before a domestic tribunal had a right to be represented by someone else on the basis of the principles of natural justice. Therein this Court was not called upon to consider either the limits of the reasonable opportunity to defend oneself, guaranteed under Article 311 or the scope of a statutory rule. The question that falls for decision in this case did not arise for decision in those cases."

11. A similar question came up for consideration in the "BOARD OF TRUSTEES OF THE PORT OF BOMBAY v. DILIPKUMAR RAGHAVENDRANATH NADKARNI (AIR 1983 SC 109)". Regulation 12(8) of the Bombay Port Trust Employees' Regulations, 1976, which was put in issue before the Supreme Court, reads as under:-

"The employee may take the assistance of any other employee or, if the employee is a Class III or a Class IV employee, of an 'Office Bearer' as defined in clause (d) of Section 2 of the Trade Unions Act, 1926 (16 of 1926) of the union to which he belongs, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits."

While considering the scope of the rule imposing conditions on the employee to engage a legal practitioner in case the presenting officer appointed by the disciplinary authority is a legal practitioner, the Supreme Court has held as follows:-

https://hcservices.ecourts.gov.in/hcservices/

"In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent

> officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated."

In fact the Supreme Court had further observed as follows:-

> "In fact one can go so far as to say that the Enquiry Officer in order to be fair and just, whenever he finds the employer appointing legally trained persons as Presenting-cum-Prosecuting Officers must enquire from the delinquent employee before commencement of enquiry whether he would like to take assistance of a legal practitioner. The option then is with the delinquent employee."

12. The general rule is that in the absence of rules an employee has no right to seek for assistance of a lawyer in the departmental enquiry. Ordinarily the principles of natural justice do not postulate a right to be represented or assisted by a lawyer in the departmental proceedings. But there is an exception and the question would be different if the delinquent officer or the workman, as the case may be, is pitted against a legally trained person in the departmental enquiry and the delinquent officer or the workman is not that much familiar with the legal procedures involved in the departmental enquiry. When a presenting officer is stated to be a man of law, justice would require that the officer or workman who has no legal background is represented through a lawyer. Though the quasi-judicial authorities holding domestic enquiries are not governed by strict and technical rules of evidence, yet they are governed by the rule of equity and natural justice and they must act in fairness. This concept is to ensure that there is no failure of justice. Natural justice is a concept which has succeeded in keeping the arbitrary action in limits and preserving rule of law. In this context, the following observation of Lord Denning M.R. In "C.A.PETT v. GREYHOUND RACING ASSOCIATION LTD. (1968 (2) ALL ER 545)" can be usefully referred to.

> "Once it is seen that a man has a right to appear by an agent, then I see no reason why that agent should not be a lawyer. It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it every day. A magistrate says to a man: 'You can ask any questions you like'; whereupon the man immediately starts to make a speech. If justice is to be done, he ought to have the help of someone to speak for him; and who better than a lawyer who has been trained for the task? I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

speak by his own mouth. He has also a right to speak by counsel or solicitor."

It has been held by the Supreme Court in "S.L.KAPOOR v. JAGMOHAN (1980 (4) SCC 379)" that the non observance of principles of natural justice by itself is a prejudice caused.

13. On the above pronouncements of the Supreme Court relating to the issue, the facts of the case in question should be considered. It is the specific case of the respondent that he was pitted against a legally trained person as a presenting officer. Therefore, he has made a request for the assistance of an advocate. The said request was made on the ground that the presenting officer was the Manager (Personnel & Administration) and also holding charge of the post of Chief Vigilance Officer and had put in not less than 20 years of service as Personnel Manager in the private sector undertakings before joining the appellant undertaking and is a degree holder in law. For better appreciation of the stand of the appellant, the relevant portion as stated in paragraph 6 of the affidavit filed in support of the writ petition reads as under:-

"It is therefore a moot point whether or not the presenting officer was trained in the legal discipline. In any event, having put in not less than 20 years of service in the personnel department of private sector undertakings, it cannot be validly claimed that he was not legally trained. Therefore, when I was denied the assistance of an advocate, having been pitted against a legally trained presenting officer it is against all the principles of natural justice. On this ground alone, the whole disciplinary proceeding against me stands vitiated and false and therefore the order of termination passed against me founded on the said enquiry fails."

While meeting this submission, in paragraph 9 of the counter affidavit, it is stated as follows:-

"As regards paras 6 & 7, I submit that all the averments made therein are false and baseless and hence denied. I submit that Rule 31(6) of the CDA Rules of the respondent company provides that an employee may take assistance of any other public servant but may not engage a legal practitioner for the purpose. Hence, the petitioner's request for legal assistance was denied in accordance with the said rule."

14. From the above rival stand, it is clear that the averment of the respondent that the presenting officer was a legally trained person was not denied by the appellant, except saying that the respondent was denied the assistance of a legal practitioner as the rules do not provide for the same. The Supreme Court in "MINTU BHAKTA v. THE STATE OF WEST BENGAL (1973 (4) SCC 85)" has held that "a vague answer is neither a proper nor an adequate

https://hcservices.ecourts.gov.in/hcservices/

reply in disproof of the specific allegation and therefore the allegation remains unanswered and must consequently be accepted in the absence of any cogent reply". In the absence of specific denial, the claim of the respondent that he was pitted against a legally trained person who is familiar with the procedures of the domestic enquiry including the legal consequences thereof should be accepted. In the absence of such expertise by the officer, the denial of assistance of a legally trained person would render the disciplinary proceedings vitiated. We, therefore, agree with the views expressed by the learned single Judge in this regard. Moreover, the learned single Judge has also given liberty to the appellant to proceed further in accordance with law.

15. For the foregoing reasons, we find no merit to interfere with the judgment of the learned single Judge. Accordingly, the order of the learned single Judge is confirmed and the writ appeal is dismissed. No costs. Consequently, W.A.M.P.No.5104 of 2004 & 291 of 2005 are also dismissed.

ss

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The Chairman & Managing Director,
Hindustan Teleprinter Ltd.,
Guindy, Chennai 600 032.

+ 1 cc to Mr.R.G. Narendiran, Advocate SR 9627

Judgment in

W.A.No.2762 of 2004

GG(CO)
SR/7.3.2005

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/